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Personnel Policy Manual for  
Nonappropriated Fund Instrumentalities

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The Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity), Office of the Assistant Secretary of Defense (Force Management and Personnel), has authorized the following page changes to DoD 1401.1-M, "Personnel Policy Manual for Nonappropriated Fund Instrumentalities," December 1988:

PAGE CHANGES

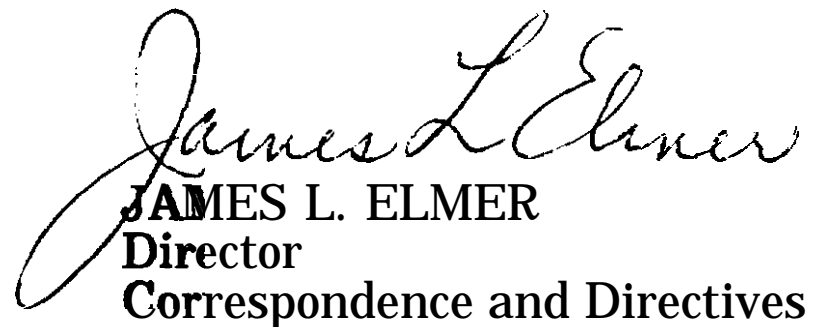
Remove: Pages iv through x and V-1 through V-4

Insert: Attached replacement pages and new pages V-5 through V-9

Changes appear on pages v, V-2 through V-4 and are indicated by marginal bars.

EFFECTIVE DATE

The above changes are effective immediately. Forward two copies of revised implementing documents to the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity), Office of the Assistant Secretary of Defense (Force Management and Personnel), within 120 days.

  
JAMES L. ELMER  
Director  
Correspondence and Directives

Attachments  
16 pages

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## CHAPTER V

### PERSONNEL RELATIONS AND SERVICES

#### A. EMPLOYEE-MANAGEMENT RELATIONS POLICY

In conformance with the provisions of DoD Directives 1426.1 and 1400.5, the Heads of DoD Components in their management of NAFI personnel shall recognize and strive toward the establishment of orderly and constructive relationships between managerial and **nonmanagerial** personnel. Continued and unimpeded communications are vital factors to an informed and productive **workforce**. These extend to a thorough understanding of conditions of employment, job requirements, employee rights, privileges, and responsibilities of both management and employees.

1. Standards of Conduct. The nature of many of the activities supported by nonappropriated funds administered by the DoD Components is such that the civilian employees and assigned military personnel shall exemplify the highest standards of personal conduct and integrity. The provisions of DoD Directive 5500.7 are applicable to NAFI employees. The Heads of DoD Components shall ensure that their NAFI employees are fully acquainted with all aspects of the government's standards for ethical conduct.

2. Loyalty. The Heads of DoD Components shall ensure that no person will be employed or continue to be employed at a NAFI who:

- a. Advocates the overthrow of the U.S. Government.
- b. Is a member of an organization that advocates the overthrow of the U.S. Government.
- c. Participates in any strike against the government, including all instrumentalities of the government.

3. Political Activity

a. The principles of 5 U.S.C. 7324 relating to political activity of government employees are hereby administratively extended to NAFI employees to the extent that no employee shall:

(1) Use official authority or influence for the purpose of interfering with an election or affecting its results.

(2) Take any active part in a partisan political campaign.

b. NAFI employees retain the right to vote as they choose; express their opinions on all political subjects and candidates; and participate in nonpartisan political activity. Also, an employee may hold a State, territorial, and local office if it does not conflict with duties, laws, or executive orders. No inquiries shall be made concerning the political affiliation of an employee or applicant for employment, and any disclosures of political affiliation shall not be considered in the employment process of the employee or applicant for employment.

c. Determinations as to violations of the above policy will be made by the Head of the DoD Component in which such violations are alleged to have occurred.

#### 4. Business-Based Actions

a. Definition. A business-based action (BBA) is a reduction in employment category or pay rate, a furlough of eight calendar days or more, or separation action initiated by management for non-disciplinary reasons. A BBA is used to adjust resources in response to changes in business revenue, budget, workload, organization, or mission. It is not used to address a performance or conduct deficiency. Employees are affected by BBAs only if so identified after an objective, fair and equitable ranking against other employees in the same employment category and group of affected positions.

b. Coverage. The following provisions cover Regular employees and those Flexible employees who have been on the rolls of the NAF activity effecting the BBA for three continuous years (except Flexible employees are not covered where they are furloughed, nor do they have a right to the third stage of the appeal process, i.e. , appeal above the base level). Excluded from coverage are employees currently serving probationary periods (non-supervisory) , employees with less than satisfactory performance ratings, and Flexible employees who have been on the rolls of the NAF activity effecting the BBA less than three continuous years. The following provisions are not applicable where they conflict with negotiated procedures under collective bargaining agreements.

#### c. Types of Business Based Actions

(1) Reduction in pay rate. Such actions could result from reorganization, realignment of workload, elimination of duties or responsibilities from a position, lack of funds, or from a need to be competitive with pay in other organizations or the local labor market.

(2) Furlough of a Regular employee (Flexible employees are excluded) for **eight** calendar days or more (temporary layoff for a definite or indefinite period of time).

(3) Change in employment category

(4) Separation

d. Factors to consider Before Resorting to BBA. Careful planning is necessary to lessen adverse effects, prepare employees, and to avoid administrative and morale problems. It is important to consider whether the cause of the reduction or realignment is a temporary or permanent situation along with each of the various actions that may be taken. For example, a reduction in hours of work, a reduction in pay rate, or a furlough may be more appropriate than separation.

e, Business Based Action Procedures

(1) Determining Affected Employees.

(a) Covered employees must be ranked to determine the order in which they will be affected (unless all employees will be equally affected--separation due to base closure, for example). The ranking process must include performance and seniority. Performance may be the primary criterion. The performance factor must include at least the employee's last two performance ratings. If there is only one rating, then it must be used. If there is no rating, then a rating must be issued and used.

(b) The determination of the order in which employees were adversely affected, the process used to determine the order, and copies of the written notices shall be maintained in a separate BBA file apart from the employee's official personnel folder. Subject to the provisions of the Privacy Act of 1974, the BBA file shall be made available for review upon request only by an affected employee or by those whose official duties require access.

(2) Advance Notice. The minimum advance notice period for covered Regular employees is 7 calendar days for a non-separation action and 30 calendar days for separation. For covered Flexible employees, the minimum advance notice period is 24 hours for non-separation action and 7 calendar days for separation. Under emergency conditions (e.g., breakdown of equipment or other emergency conditions requiring suspension of operations, or an unanticipated reduction in business such as occurs with a sudden deployment of troops) a minimum of 24 hours notice may be given. The notice shall contain:

(a) The employee's position title, series, grade or payband level, and rate of pay.

(b) A description of the BBA and reason for it.

(c) Advice on severance pay entitlement, if applicable.

(d) Advice on loss of benefits, if applicable.

(e) If the action is separation:

1 A statement that the action taken is non-disciplinary and does not preclude re-employment.

2 Information on the reemployment priority list (RPL) .

3 Information on eligibility for Civil Service positions for one year from date of separation, under the terms of the DoD/OPM Interchange Agreement.

4 Information on unemployment compensation

(f) An explanation of the employee's right to appeal, including how and where to appeal and the time limits.

(3) Appeals of Business Based Action

(a) General. Covered employees have a right to appeal in accordance with the following provisions, within 7 calendar days after the effective date of the BBA, if they believe BBA regulations and procedures were not properly applied. Management decisions regarding the budget, workload, organization and mission are reserved to management and are not appealable. If an employee alleges that the action resulted from an act of discrimination, the action may only be contested through the discrimination complaint procedure.

A decision in favor of an employee entails the requirement that the employee be "made whole." This includes pay and restoration to duty including employment rights and benefits, as applicable. If, however, it is clear the same action would have been taken against the employee even if the regulatory or procedural error had not been made, then there is no "made whole" provision.

(b) Representation. An employee may be accompanied, represented, and advised by a representative of his or her own choosing, provided the person is willing and free to do so. The employee shall designate his or her representative in writing and provide the designation to the first stage deciding official. The representative's service must not result in a conflict of interest as determined by the installation commander. All costs for the representative shall be borne by the employee.

(c) Use of Official Time. The employee and his or her designated representative may use reasonable amounts of official duty time subject to supervisory determination as to when such time may be used in light of priority needs of the NAFI. Such time may be used to prepare and present appeals.

(4) Business Based Action Appeals Procedure

(a) First Stage. The employee and his or her representative shall, not later than 7 calendar days after the effective date of the BBA, present an written appeal to the lowest level of management which can grant relief. Every effort shall be made to resolve the matter promptly and fairly at this stage. A written decision shall be provided to the employee within 7 calendar days of receipt of the appeal. It shall summarize the issue, the consideration given, and advise the employee of the right to seek relief at the next stage within 7 calendar days from the date of receipt of the decision, if he or she is not satisfied.

(b) Second Stage. A written appeal shall be submitted to an official, designated by management, in the chain of command above the official who considered the appeal at the first stage. Upon receipt of the

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appeal, the deciding official may designate a disinterested third party to review the facts and make a recommendation to the deciding official. A written decision shall be provided the employee within 45 calendar days of receipt of the appeal. The decision shall summarize the issue, the consideration given, and advise Regular employees of: (1) the right to request a review of the written appeal record by a level above the installation commander or principal management official of the Army and Air Force Exchange Service (AAFES); (2) how and where to file the request; and (3) time limits for filing. There is no further review or appeal above this level for covered Flexible employees.

(c) Third Stage (Applies to Regular employees only). The official above the installation commander, or the principal management official of AAFES, designated as the reviewer, **shall** make a decision based on the written record within 30 calendar days of receipt. NAF resources shall be used to accomplish BBA appellate review above the base level. Components may request exception to this NAF resource requirement. There is no further review or **appeal** above this **level**.

(5) Record of Appeal. A complete record of the appeal shall be maintained in the BBA file.

#### 5. Reemployment Priority Lists.

a. Each personnel office servicing a NAF activity that separates employees by BBA shall establish a Reemployment Priority List (RPL) to provide placement assistance to those separated by BBA. Separated employees **shall have priority** placement rights **in the NAF** activity from which separated and priority consideration rights at other **NAF** activities in **the** commuting area. They shall immediately be placed on the RPL and remain on the RPL until reemployed, **but** not longer than **1** year from the date **of** separation.

b. **NAF** employees who **were** separated by BBA **no more than one** year prior to the effective date of this RPL policy shall be added to the RPL. Placement or consideration is prospective from the time placed on the list. As an exception to the general **rule**, employees so added **shall** remain on the list **until reemployed or until one year from the date** they **were** added whichever comes 'first.

c. A person on the RPL shall be offered employment in a vacant **position in the** NAF activity from which he or **she** was separated if:

(1) Management is filling a vacancy by other than detail or position change (promotion, demotion, reassignment).

(2) The **position is in the same or lower employment category** as the position from which separated,

(3) The position is in the same or lower grade or pay level as the position from which separated.

(4) The position has substantially the same duties as the position from which separated.

d. If the offer is declined, the person will be removed from the RPL and the next eligible person on the RPL will be offered the position, and so on until the RPL is exhausted.

e. Rehiring an individual on the RPL is a noncompetitive recruitment action. Therefore, such individuals shall be rehired before those who receive preference in competitive recruitment actions.

f. A person on the RPL must also be offered priority consideration for NAF jobs in other DoD NAF activities in the commuting area if:

(1) The NAF activity is filling the vacancy by other than detail or position change (promotion, demotion, reassignment);

(2) The vacancy is in the same or lower grade or pay level as the position from which the person on the RPL was separated;

(3) The vacancy is in the same or lower employment category as the position from which the person on the RPL was separated; and

(4) The vacancy has substantially the same **duties as** the position from which the person on the RPL was separated.

g. DoD NAF activities shall exchange RPLs within the commuting area to effect the above requirements.

h. An individual's name is removed from the RPL when he or she accepts an offer of a position in the same or higher employment category as the position from which separated in any DoD NAF activity. Declination of such an offer constitutes removal from the RPL.

## **6. Employee Grievances**

a. NAFI employees shall have the right to present their complaints and grievances to management officials for prompt and equitable consideration. The Heads of DoD Components shall establish procedures for deciding grievances of employees in an equitable and timely manner.

b. Where a labor organization has exclusive recognition, any negotiated grievance procedure shall be governed by 5 U.S.C. 7101 et seq., as implemented by DoD Directive 1426.1 and DoD 1400.25-M.

c. The employee grievance procedure may be used to resolve employee disputes of business-based actions and disciplinary actions of suspension of 30 days or less.

## 7. Disciplinary Actions

a. A disciplinary action is a personnel action affecting a regular employee that reduced the employee's basic pay or level; placed the employee in a nonpay, nonduty status; or separated the employee from NAFI employment and that was effected for cause; i.e. , the disciplinary action stemmed directly from the actions of the effected employee.

b. Disciplinary **actions** do not include:

(1) Business-based actions.

(2) Actions taken as the result of termination of temporary promotion.

(3) Separation or change to lower pay or level when voluntarily initiated by the employee.

(4) Application of a revised prevailing rate schedule when there is no change to the position.

(S) **Actions** taken as a result of an employee abandoning his or her position.

c. Procedures for Processing Disciplinary Actions and Appeals.

The Heads of DoD Components shall issue regulations and procedures for processing disciplinary actions **and for** handling employee appeals of disciplinary actions that result in reduction of pay **or** in separation. That appeals process shall include a final appellate decision above the level of Installation Commander or General Managers of the Army and Air Force Exchange Service.

8. Incentive Awards and Recognition Programs. Recognizing that NAFI employees at all levels share responsibility for the efficient and economical operation of **the** activity in which they are employed, incentive awards programs shall be established to the extent feasible, and within resources available, for the purpose of improving these operations and recognizing deserving employees.

9. Occupational Safety and Health. The administrators of NAFI personnel shall create and maintain a safe and healthful environment for their employees and for the users of facilities managed for the morale, welfare, and contentment of military personnel, their dependents, and authorized civilians. All safety and health regulations shall be strictly adhered to by NAFI employees in accordance with DoD Instruction 6055.1. Where safety technicians are not available within the installation, outside consultants shall be used.

10. Drug and Alcohol Abuse. The Heads of Components shall ensure that drug and alcohol abuse control programs are available to NAFI employees in accordance with the provisions of DoD Directive 1010.4.

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**B. LABOR-MANAGEMENT RELATIONS POLICY**

The Federal Service Labor-Management Relations Statute, 5 **U.S.C.** 7101 et seq., is implemented within the Department of Defense by DoD Directive 1426.1 and DoD 1400.25-M. The statute, as implemented by these DoD issuances applies to **Nonappropriated** Fund Instrumentalities (see 5 **U.S.C.** 7103 (a)(2) and (3) and DoD 1400.25-M, Chapter 711).

**C. ENTITLEMENT TO PERSONAL SERVICES AND GOVERNMENT QUARTERS**

The privileges afforded **NAFI** employees shall be consistent with those available to appropriated fund employees. In addition, the personal use of the facilities of the **NAFI** in which an individual is employed may be authorized by local commanders when the use by regular eligible patrons is not diminished. The entitlement of 5 **U.S.C.** 5911, (Government Quarters and Facilities) as well as any other regulations prescribed by the President and deemed **to be necessary and** appropriate to **carry out the provisions** of this section, are hereby administratively extended to **NAFI** civilian personnel. The Heads of DoD Components shall prescribe the regulations necessary to carry out the provisions of 5 **U.S.C.** 5911. Except in isolated situations in which the only suitable quarters and facilities available are government-owned, **NAFI** employees will be expected to secure them from the private sector. Also, exceptions **may** be made when, **in** the judgment of the commander, the mission **of** the installation will be better accomplished by having certain key administrative **NAFI** personnel quartered on the installation. The occupation of Government quarters on a temporary basis by **NAFI** employees while traveling **on** official business is authorized.

**D. "WHISTLBLOWER" PROTECTION FOR NAFI EMPLOYEES AND APPLICANTS DISCLOSING INFORMATION**

The DoD **Components** shall **ensure** that the confidentiality **of** employees and applicants making disclosures are protected fully. **In** accordance with 10 **U.S.C.** Chapter 81, **NAFI** employees and applicants for **NAFI** employment may not be impeded from disclosing information to appropriate authority that they reasonably believe evidences:

1. A violation of any law, rule, or regulation; or
2. Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific damage to public health or safety.

DoD Directive 7050.1, "Defense Hotline Program" May 20, 1987, establishes the DoD Hotline for reporting fraud or mismanagement, assigns responsibility and prescribes managing and operating procedures.

Concerning protection against reprisals, DoD Directive 1401.3 provides policy and implements P.L. 98-94, DoD Authorization Act, 1984, section 1253 (10 **U.S.C.** 1587) which establishes protection against reprisals for certain **NAFI** civilian employees and applicants who have made protected disclosures.



DoDD 1401.3 sets forth responsibilities and authorities for providing such protection and prescribes operating procedures.